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UNIVERSAL CITY STUDIOS, INC., :
Plaintiff, :
- against - : 82 Civ. 4259
NINTENDO CO., LTD. and :
NINTENDO OF AMERICA, INC. :
Defendants. : DEPOSITION
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DEPOSITION UPON ORAL EXAMINATION
OF S H I G E R U M I Y A M O T O
TAKEN AT NINTENDO CO., LTD., KYOTO,
JAPAN, ON JANUARY 11th, 1983,
COMMENCING AT 9:40 A.M. AND
ENDING AT 4:20 P.M., THEREOF.

1 Q. Where was TRS sold?

2 A. I think it was also sold in the United States.

3 Q. Was TRS the only other game you worked on before
4 working on DONKEY KONG?

5 MR. KIRBY: Video-arcade games.

6 MR. FAIRHURST: Yes.

7 A. No.

8 Q. Tell me the others.

9 THE WITNESS: Do you require to mention all the
10 machines that fall in the category of the video-
11 arcade games?

12 MR. FAIRHURST: That's correct.

13 MR. KIRBY: All the machines that fall in the video-
14 arcade quality, that you, Mr. Miyamoto, worked on
15 prior to your working on DONKEY KONG.

16 THE WITNESS: I have been involved in almost all the
17 video-arcade games of NINTENDO. Shall I mention
18 all the names of the video-arcade games?

19 MR. FAIRHURST: Well.

20 Q. How many games are we talking about? Prior to March
21 1981.

22 A. I think it is about eight.

23 Q. Would you name them?

24 A. Space Fever, Block Fever, Othello, Space High Split,
25 Sheriff, Heli Fire, Space Firebird.

1 A. It was not in my memory, and I don't think there
2 was a note dated March 2nd.

3 MR. FAIRHURST: That's what I want. Okay.

4 Q. As a result of the meeting that you attended on
5 March 2, 1981, Mr. Miyamoto, were some tentative plans
6 made by those at that meeting as to what kind of a
7 game would be developed?

8 A. I received a project where development of Popeye
9 game will take place.

10 Q. Do you remember Mr. Miyamoto whose idea it
11 was to develop a game around Popeye?

12 THE WITNESS: Aside from the content?

13 Or is it about the theme or the subject of the game?

14 MR. FAIRHURST: Both.

15 A. As to the theme of the game, a direction was made
16 by Mr. Yokoi to me.

17 Q. And what was his direction?

18 A. To develop a Popeye game using a printed circuit
19 board used in TRS.

20 Q. Who first mentioned Popeye?

21 A. I don't know who first said Popeye, but I heard about
22 this game through Mr. Yokoi.

23 Q. Was it agreed as a result of this meeting by those
24 who attended the meeting that the new game would be
25 different from the conventional ones involving space

1 and racing cars?

2 A. Yes.

3 Q. And it was also agreed that the new game would
4 have more specific characters than the previous
5 games. Isn't that so?

6 THE INTERPRETER: Characters meaning...

7 MR. FAIRHURST: Meaning the person, the animal, that's
8 sense I mean it.

9 A. Rather than a discussion concerning specific
10 characters or persons or animals which appear
11 in the game, we talked about we should develop
12 a good scene or a good picture.

13 Q. When you say a good picture or a good scene, do
14 you mean one that people would like to see? Or
15 do you mean one with the quality of image on the
16 screen being sharp and of high quality?

17 MR. KIRBY: Or indeed anything else.

18 MR. FAIRHURST: Or anything else you can think of.

19 A. I think it contains various meanings, because I
20 am a drawer or an artist. Therefore, when I
21 regard that a picture or an image is good, other
22 people will regard that the picture is good.

23 Q. Mr. Miyamoto, at this March 2nd meeting, was
24 there a discussion about using a gorilla character
25 in the new game?

1 A. No, there wasn't.

2 Q. Was there any discussion at this March 2nd meeting
3 about whether people would be interested in a
4 game that had a Popeye character?

5 (Off the record conversation with regard to
6 the meaning of the word 'character'.)

7 MR. FAIRHURST: Why don't we strike it and I can delete
8 the word for a moment. I may come back to it
9 again for other reasons, because I tend to think that
10 we can communicate with that word. But I can avoid
11 it at this moment.

12 Q. Was there any discussion, Mr. Miyamoto, at this
13 March Second meeting, as to whether people would
14 be interested in playing a game that had Popeye in it?

15 A. I don't think there was a particular discussion on
16 that point.

17 Q. Was there any discussion as to whether or not it
18 was important in this game that it has either animals,
19 persons, cartoon figures, that people would recognize
20 and be familiar with?

21 A. In the image of the game, there is a limitation on
22 the number of dots which can be used on the screen.
23 And if you see other games, you may find a picture of
24 very low quality. In such a game you cannot recognize
25 the picture so well. So, there was a discussion that

1 we should develop a fine picture where the picture
2 looks real, that the animals or the persons should
3 act lively in the picture.

4 Q. At the time of that meeting, Mr. Miyamoto,
5 had you heard of Popeye the Sailorman?

6 A. Yes.

7 Q. Did anyone at the meeting have pictures of Popeye
8 the Sailorman?

9 A. No.

10 Q. At some time after that meeting did you get any
11 pictures of Popeye the Sailorman?

12 THE WITNESS: When you say after the meeting, to what time
13 are you referring to?

14 MR. FAIRHURST: Anytime until or any time after the
15 meeting. Any time.

16 A. I think I obtained a picture of Popeye the Sailorman.

17 Q. Do you recall when you did that?

18 A. I don't recall it exactly. But NINTENDO has been
19 producing various merchandise related to Popeye.

20 So, there are products of Popeye in NINTENDO.

21 Q. This was true prior to March 1981 as well, as today?

22 A. With regard to Popeye? Yes.

23 Q. Does NINTENDO have any collection of comic strips
24 or pictures to which you can go when you are looking
25 for ideas for games?

1 I had a discussion with Yokoi from my side.

2 Q. Can you tell us why the idea of using Popeye
3 was abandoned or abolished?

4 THE WITNESS: My idea or the reason?

5 Q. No, what were the reasons it was abolished, irres-
6 pective of who gave the reasons?

7 A. There is a technological limitation on the number
8 of dots which can be used to depict pictures.

9 The number of dots that can be used is 16 x 16
10 and I mentioned that Popeye cannot be depicted
11 quite well in such a limitation.

12 Q. When you were discussing at this March 2nd meeting
13 the concept for the new game, was it agreed among
14 the people at the meeting that it would be important
15 to the game that it had a plot?

16 A. As in the sense as I mentioned before there was
17 an agreement.

18 Q. Can you tell us in general what was said at that
19 meeting by you on that subject, the subject being
20 the need for a plot?

21 A. I told them at the meeting that, in order to have
22 the people understand that the game has the next
23 image following to the first image, the image
24 has to have a certain relation with the next image.

25 (Off the record colloquys on the word 'image'.)

1 confident that, if I did it that way, I get a
2 meaningful response.

3 MR. KIRBY: But I think you are going in a wrong
4 direction. I know what you are trying to do.

5 Q. What aspect of the project, the DONKEY KONG project
6 was Mr. Yokoi in charge of?

7 A. I cannot specifically tell what aspect of the
8 project Mr. Yokoi was in charge. Because this
9 is a joint project.

10 Q. What did he do on the project?

11 A. We had discussions or conversations between
12 each other, Mr. Yokoi and myself.

13 Q. What was Mr. Yokoi's function?

14 A. With Mr. Yokoi and myself, first of all we
15 think about the game, what kind of game we should
16 develop. And since I am not in the management,
17 the decision I think should be made by Mr. Yokoi.

18 Q. Was there any discussion, Mr. Miyamoto, at this
19 meeting that it would be important to use pictures
20 of either animals or people, that the people who
21 played the game would be familiar with?

22 A. Yes, there was such a discussion.

23 Q. Tell us about what you remember.

24 THE WITNESS: With regard to that point?

25 MR. FAIRHURST: Yes.

1 A. For instance, if a person is beaten by a different
2 person, the victim will feel dizzy, or if someone
3 falls down from a certain place he will collapse.

4 Q. At the beginning or the outset of this project,
5 that led to development of DONKEY KONG, did you want
6 to use characters, meaning people or animals or
7 cartoon figures, that you thought--by you meaning
8 you and Mr. Yokoi--people would recognize?

9 MR. KIRBY: Now, I am going to object, because if---
10 there is a real problem both in English and
11 I gather the way it's being translated, to the
12 extent that you are asking 'recognize' has a
13 connotation possibly of graphics. Would they see
14 a picture on the screen and recognize that it was
15 for example a woman as distinguished from a man
16 or a bear as distinguished from an ape? Or are
17 you asking whether or not it is a person or an
18 animal that they are familiar with because of some
19 prior association with a well known figure or a
20 well known strip? So, I object to the form.

21 MR. FAIRHURST: It's the flatter--flutter. I know that
22 I could ask the question that way, too.

23 MR. KIRBY: I think he will answer it, as he has
24 already answered it several times already in terms
25 of graphics. Now, if you are...

1 MR. FAIRHURST: I am not interested in graphics.
2 That's nothing.

3 MR. KIRBY: Well, if you ask that question again
4 that way, you will get the same answer. I don't
5 know what you will get if you ask another way.

6 MR. FAIRHURST: I will get it.

7 Q. Was there a discussion at this March 2nd meeting
8 as to how it would be important to have as the
9 images on the screen people or animals, characters,
10 that the public was familiar with because they
11 had seen them in comic strips or motion pictures
12 or wherever?

13 A. I don't think there was a discussion with regard
14 to that point, except on the point that we should
15 employ Popeye as a character in the game. And also
16 as I mentioned before, there was a discussion that
17 the action should be lively on the screen.

18 Q. Was there a discussion that it would be important
19 to use specific characters as opposed to general
20 characters?

21 MR. KIRBY: Same objection.

22 MR. FAIRHURST: John, I don't see how you can object to
23 that one. If you look at the document you furnished
24 us, the translation of an affidavit given by Mr.
25 Miyamoto and Mr. Yokoi in the Japanese proceedings,

1 you will see that it refers to 'specific
2 characters'. That's the word that comes out
3 of the translation.

4 MR. KIRBY: I am not stopping him from answering
5 the question. I think the question is objectionable.
6 If he can answer and if he understand it, that's fine.

7 MR. FAIRHURST: . . All right.

8 MR. KIRBY: Can you answer the question?

9 THE WITNESS: Could you repeat the question once
10 again?

11 MR. FAIRHURST: All right, I will have another way
12 in putting it.

13 Q. Was it important to you that characters used in
14 the DONKEY KONG game be ones which you believe
15 people already knew about for whatever reason?

16 A. I felt it was important in the sense that it
17 will be easier for the people to recognize it
18 on the screen. But it didn't mean that we should
19 decide on a specific character..

20 Q. Was it important that the plot, as you gave that
21 description to the sequence of events or the story,
22 be a simple one?

23 A. Yes.

24 Q. Can you tell me who was the one who thought of the
25 idea of using gorilla as the principle character in

1 the DONKEY KONG game?

2 A. I think there was a discussion between Mr. Yokoi
3 and myself with regard to that point.

4 Q. As between yourself and Mr. Yokoi, who was the one
5 who said first, "Well, let's use a gorilla"?

6 A. I don't remember exactly who said it first. But
7 I remember I said that I can draw a gorilla
8 which is the same size of Bruto.

9 MR. FAIRHURST: Let me have marked as Plaintiff's
10 Exhibit M-2, a drawing which I will describe
11 as containing Olive Oil, Popeye, Bruto, furnished
12 to us by NINTENDO counsel.

13 (The drawing was so marked.)

14 Q. Did you prepare this Exhibit No. M-2?

15 A. Yes, I did.

16 Q. And this was prepared on March 21st?

17 A. Yes, or it was prepared on the previous day or on
18 that day.

19 MR. FAIRHURST: John, so that we can save some time
20 on the identification of Exhibits, some of them
21 I will have specific questions of the witness,
22 others I will not, but I would like to establish
23 the authenticity, that is to say, that the witness
24 is the one who actually prepared the notes you furnished
25 me in one folder, the one that is denoted "Miyamoto

1 Q. In M-4, do you refer to the gorilla as KING KONG?

2 MR. KIRBY: I take it that you mean by the question
3 does he use the words KING KONG to refer to the
4 character in here.

5 MR. FAIRHURST: Yes.

6 MR. KIRBY: But you don't it: Is that the exclusive way
7 that he refers to?

8 MR. FAIRHURST: I am just talking about this one document,
9 how it is referred to in this first paragraph.

10 MR. KIRBY: All right, but if you are referring
11 to the first paragraph, perhaps the answer
12 is different than if you look at the other paragraph.

13 MR. FAIRHURST: I am talking about the first paragraph first.

14 MR. KIRBY: All right, why don't repeat the question
15 referring to the first paragraph?

16 A. It is true that I used the word KING KONG in
17 describing the gorilla in this paragraph.

18 Q. Where had you heard about KING KONG before preparing
19 this document that has been identified as M-4?

20 THE WITNESS: You mean from the day when I was born
21 up till the time I prepared this document?

22 MR. FAIRHURST: Yes.

23 A. As I mentioned before, I saw a movie called
24 KING KONG VERSUS GODZILLA.

25 Q. What did you understand KING KONG to be?

1 A. My understanding is that it is a big gorilla
2 which is a stuffed doll.

3 Q. Did you understand that in the motion picture
4 KING KONG VERSUS GODZILLA the KING KONG was a
5 stuffed doll?

6 A. Even though I was a child, I think that was in
7 my mind.

8 Q. That was in your mind when you prepared M-4?

9 A. I don't think I had a clear definition between
10 KING KONG and gorilla?

11 MR. KIRBY: I am not sure--why don't you two
12 discuss the translation for a second? Because
13 I think there is a problem in translation.

14 MR. FAIRHURST: Well, I don't.

15 MR. KIRBY: Well, I do. Can we have the witness
16 give the answer again.

17 MR. FAIRHURST: Yeah, I would ask the question again.
18 I will try to clarify it. Because I don't think
19 there is any problem in translation.

20 Q. You understood when you were preparing M-4
21 that a gorilla had appeared in the motion picture
22 called KING KONG VERSUS GODZILLA. Is that correct?

23 A. No, I wasn't understanding that way.

24 Q. Well, what were your understanding then?

25 A. I don't think I was differentiating gorilla from

KING KONG.

Q. Did you have a discussion when you showed M-4 specifications to Mr. Kawahara about the KING KONG?

A. I don't remember. I don't think we had such discussions according to my memory.

Q. What did Mr. Kawahara say to you, as best you can recall, when you showed him M-4?

A. I don't remember exactly. But I think Mr. Kawahara said that this is not a new game.

Q. Anything further?

A. I don't remember.

Q. How long did the discussion last?

A. About 20 minutes.

Q. Have you discussed KING KONG with Mr. Kawahara since that conversation?

A. No, I have not.

Q. Can you tell us how Popeye came to be listed on what was previously marked as M-3, Mr. Kawahara's notes?

A. At that time I remember I talked to him that we have developed a Popeye associated game, and there was Olive in that game. And the third line from the bottom it says 'spinich'.

Q. The third line from the bottom of what?

A. Page 3.

1 MR. KIRBY:

2 The witness has pointed at M-4 and
3 said that he showed this to Mr. Yokoi.

4 MR. FAIRHURST: Okay. All right.

5 Q. But you just don't know whether he has a copy of
6 that or not.

7 A. I don't know.

8 Q. Now, right from the time, from the start of the
9 project that led to the development of DONKEY KONG,
10 and when I say right from the start, I mean the
11 point when you began to conceive the project as
12 using the gorilla, you referred to the gorilla as
KONG, did you not?

13 MR. KIRBY: Okay, now I am going to object to the question
14 it contains two time references, and I think it
15 may be confusing.

16 MR. FAIRHURST: I think I can do better.

17 Q. From as early as March 30, you began referring to
18 the gorilla character as KONG. Is that correct?

19 A. It wasn't only KONG that was in my mind.

20 Q. What else was in your mind?

21 A. Monkey, gorilla.

22 Q. But you referred to him as KONG in any event?

23 A. I called it KONG and also I called gorilla.

24 Q. In the first paragraph you also called it KING KONG.
25 Is that correct?

1 A. yes, here I called KING KONG.

2 Q. Can you tell us when you first heard of the
3 term KONG for gorilla?

4 THE WITNESS: From the time since I was born up to
5 the present?

6 Q. Is it your understanding that the Japanese people
7 refer to gorilla as KONG?

8 THE WITNESS: Your question was when I heard the word
9 KONG for gorilla, so I asked since I was born or
10 whether it was since I was born.

11 MR. FAIRHURST: No, that's not really my question. I will
12 try it again.

13 Q. Is it your present understanding that the Japanese
14 people refer to gorillas as KONG?

15 MR. KIRBY: Now, look, the witness is confused.

16 MR. FAIRHURST: I am trying not to.

17 MR. KIRBY: I know but the reason he is confused
18 is that when you asked him the question of when
19 he first of the word KONG for gorilla, he asked
20 you for the time reference: Do you mean all the way
21 back from the time I was born? And you didn't
22 respond to that, you asked him another question
23 about the Japanese people.

24 MR. FAIRHURST: He answered that question.

25 MR. KIRBY: No, he didn't. That was not an answer.

1 among those names or proposed names?
2 A. There is no reason.

3 Q. How would you describe the gorilla character in the
4 game DONKEY KONG? When I say 'describe', what
5 qualities does the gorilla have? The fierce, the
6 big, physically and in his behavior?

7 THE WITNESS: Could you repeat the question again?

8 Q. How would you describe the gorilla in the DONKEY
9 KONG game? And by 'describe' I mean: How would
10 you characterize or how do you see his physical
11 characteristics and his behavioral characteristics?

12 A. I tried to make it close to a human being as compared
13 to the usual gorilla. And I tried to make it
14 as a human being wearing stuffed doll. And as to
15 the nature of the gorilla, I tried to make it as
16 a stupid and goofy type of gorilla which is similar to
17 the nature of Bruto and a big man.

18 Q. Mr. Miyamoto, what function with respect to the
19 DONKEY KONG game was performed at Ikegami?

20 THE WITNESS: Do you want me to specifically mention
21 the function or rather would you describe the function?

22 MR. FAIRHURST: No, I would like for you to describe it.
23 I don't know what the function is. That is why I
24 am asking the question.

25 A. The function is programming and writing down the

1 a woman with flaming barrels being tossed at
2 him from behind or he is dropping those barrels.
3 That is the first picture I will ask the witness
4 whether he is the one who drew that.

5 A. Yes.

6 Q. Can you tell us when approximately in the develop-
7 ment of the project you drew that? Is that early
8 on or in the middle or towards the end of it?

9 A. Probably in the middle toward the end of the project.

10 Q. Do you know, Mr. Miyamoto, what names were being
11 considered by Mr. Todoru for naming the DONKEY KONG
12 game when it was under consideration before him?

13 A. Since it is written DONKEY KONG here, I think it
14 was after the time when I heard that the name
15 would be DONKEY KONG from my boss.

16 Q. Do you know what names were being considered before
17 the game was actually named DONKEY KONG?

18 A. I haven't heard about it. But I slightly remember
19 that I heard a name of Funky Kong. But I don't
20 remember it correctly.

21 Q. Do you know why the game was eventually named
22 DONKEY KONG?

23 A. No. I was just told the result and I haven't heard
24 the reason for it. But, listening to the result,
25 I had a certain image of it.

1 Q. What was that image?

2 A. A goofy, big fellow or a gorilla.

3 Q. Does the sound DONKEY mean anything to you in
4 Japanese?

5 A. In my understanding, it means the donkey the
6 animal itself and also a person who is slow in
7 doing things or a meaning similar to stupid.

8 Q. That means the animal itself, the donkey or
9 a horse-like animal?

10 A. Yes, I think there are two meanings.

11 Q. What is the word DONKEY the horse-like animal in
12 Japanese?

13 A. Roba.

14 Q. Do you recall attending a meeting some time in
15 July 1981 in which the U.S. version of the game
16 was discussed?

17 A. Could you wait for a moment, because I don't remember?

18 MR. FAIRHURST: Okay. In the meantime I will show you a
19 copy, John. Look at the entry for 7 July 1981
20 of the diary.

21 MR. KIRBY: Would you just read the question back
22 please?

(The reporter read back the question.)

23
24 A. It is true that I had a discussion with someone with
25 regard to the content of the game. But I do not

1 remember how this conversation took place, whether
2 over the phone or whether it was in a meeting. And
3 I do not remember whether this was only a schedule
4 or whether this was a record.

5 Q. Am I correct in understanding that there are differ-
6 ences between the U.S. version of DONKEY KONG and the
7 Japanese version?

8 A. I had made some advice with regard to how or to what
9 extent the game should be complicated.

10 Q. Was the answer to my previous question yes?

11 A. With regard to the point whether we had discussed
12 about this on July 14th meeting, my answer is 'no'.

13 MR. FAIRHURST: No, my question is different.

14 MR. KIRBY: Mr, Miyamoto, listen to the question
15 and answer the question.

16 Q. Am I correct in understanding that there are differ-
17 ences between the DONKEY KONG game sold in the U.S.
18 and the DONKEY KONG game that was sold in Japan?

19 A. Yes, there is.

20 Q. Would you tell us what those differences are?

21 A. The difference is as I have mentioned at the outset.

22 Q. Forgive me, but tell me what those differences are.

23 I can no longer remember if you told me before?

24 A. Since the game is more difficult as compared
25 to a game sold in Japan, the time span is shorter.

1 Q. Have you been told by anyone, Mr. Miyamoto,
2 that the name DONKEY KONG reminds them of KING KONG?

3 MR. KIRBY: I assume you mean by that other than
4 things--

5 MR. FAIRHURST: Other than things, yes.

6 MR. KIRBY: --that we told him in connection with
7 the law suit.

8 MR. FAIRHURST: Let me make the question clearer.

9 Q. Strike it. Other than the conversations you
10 have had with the people at NINTENDO about this
11 law suit and with the lawyers in preparation for
12 your testimony here today, have you been told by
13 anyone that DONKEY KONG reminds them or makes
14 them think of KING KONG the gorilla?

15 A. No.

16 Q. Have you been told by anyone or has it been
17 suggested to you by anyone other than conversations
18 you had in conjunction with this law suit with
19 the counsel and with the people at NINTENDO
20 that DONKEY KONG reminds them of the motion picture
21 KING KONG?

22 A. No.

23 Q. Has anyone suggested to you or told you that
24 DONKEY KONG reminds them of a large stuffed gorilla?

25 A. No. There is a conversation whether the game is

interesting or not. But there has been no discussion with regard to what you have said in the question.

Q. Was it important to you that the gorilla in the game be called KONG?

A. No, it was not.

Q. You didn't care what they called the gorilla?

A. No, I didn't care about it. I myself came up with various names. But any name can be all right.

Q. At any time did you come up with any name for the gorilla that did not have the word KONG in it?

A. In thinking of the names for the game there were some names which did not include the word gorilla or KONG.

Q. Names that you had suggested?

A. The names which were in my mind.

Q. Can you tell me some names for the gorilla other than those that are called KONG, that you suggested?

A. My favorite name for the game is "Build-On".

MR. FAIRHURST: I have no further questions.

1 EXAMINATION BY MR. JOHN J. KIRBY, JR.:

2
3 Q. Mr. Miyamoto, when you were asked by Mr. Fairhurst
4 to describe the character or features of the
5 gorilla character in the game DONKEY KONG, you
6 referred to it as in part as a stuffed doll
7 gorilla character. What did you mean by stuffed
8 doll gorilla's character?

9 A. What I meant by stuffed doll is the actor, in
10 other words a human being, wearing gorilla costume
11 and act like a human being.

12 MR. KIRBY: That is the only question I have for
13 Mr. Miyamoto.

14 --- oOo ---

15
16 MR. KIRBY: All right, Mr. Miyamoto, your deposition
17 is now concluded and you may go back to work.

18 MR. FAIRHURST: You can put on the record that I do thank
19 Mr. Miyamoto for his attention very much and for
20 bearing with me.

21 --- oOo ---

22
23
24 Shigeru Miyamoto